No. 8842

Supreme Court of Illinois

Wm. H. Watter

vs.

Wm. Kirk, et al,

71641 7

Pleas held before the Honorable Samuel S. Marshall, presiding Judge of the twelfth Judicial Circuit at the September and May Terms of the Jefferson Circuit Court A.D. 1852 in a certain cause therein pending, wherein James Vaughan ~~for the use of~~ assignee of Reason Bennett Admr of Levi Bennett decd for the use of William Reik is Plaintiff and William H Watter is Defendant &c &c

Be it remembered that on the ~~15th~~ 31st day of March AD 1852 the Defendant herein filed in the Clerk's Office of the Jefferson Circuit Court the following Bond or Note with endorsements thereon and transcript of a Judgment thereon from the dockets of William Dodds a Justice of the Peace in & for the County of Jefferson and State of Illinois — which are in words & figures as follows. viz —

"On or before the ~~fifth~~ 7th day of November next, for goods got of the Estate of Levi Bennett, ~~deceased~~ by my wife, over and above the specific property, allowed her as his Widow — I promise to pay Reason Bennett administrator of the Estate of Levi Bennett decd, twenty two dollars 25 cents with interest thereon from date Augst 11th 1844"

"William H Watter"

On said Note is the following endorsement "I assign the within Note to James Vaughan, for value recd this first day of November 1844"

"Reason Bennett"

Upon which Note are the following file marks & figures (to wit) "Filed March 31st A D 1852

John Wilbanks Clerk

By J. B. Lawrence D.C."

[8842-1]

Samuel Vaughan Assignee of Reuben Bennett Admr of Eli Bennett decd for the use of William Kirk

vs

William H Walles

Debt by Note
$31.97
March 13th 1852

And now on this day came, the Defendant by change of venue from the Office of J. H. Watson Esqr — The parties appeared with their Witnesses — And Nelson for Deft made a Motion to dismiss — Motion overruled — also pleads "Non est factum" and payment without Oath — Witnesses being Examined — It is Considered from the Evidence and the law in the case, the Plaintiff have Judgement, against said Defendant for the sum of thirty one dollars and ninety seven cents & Cost of suit

Fees	J. H. Watson Esq	$1.68
"	W. Dodds "	$1.38
"	Const. Chastain	$0.85
		3.91

W. Dodds J.P.

State of Illinois
Jefferson County

I W Dodds certify that the above is a true & perfect copy of the proceedings had in this cause

Given under my hand and seal this 31st day of March 1852

W Dodds J.P.

Transcribed

Mich March 1852
John McBride
Elias
Wm Williams
Sec

James Vaughan who sues as
Assignee of Reasin Bennett
Administrator of Levi Bennett dec'd
for the use of William Kirk

vs

William H Walter

Appeal

Mr Joseph Vaughan

Sir. take notice that on the trial of the above cause, I have no other witness or means within my knowledge, to prove that the note supposed to have been assigned, to you by Reasin Bennett (and on which suit has been brought against me, by you for the use of William Kirk) was the only note Sd Bennett held against me, at the time my brother James M Walter, heard Sd Reasin Bennett say, the note he held on me was pd — except by my own oath, or your's

Mt Vernon 10th May 1852 Yours &c

William H. Walter

The Defendant offered to prove by parol that after a rendition of Judgment on the Note, sued on — Vaughan sold the Debt by Judgement to Kirk as a bad debt and within recourse back on him — Ruled out by the Court and Excepted to by deft

Filed May 10th 1852
John Wilbur Clerk
By S. B. McLanner D.C.

State of Illinois }
Jefferson County } ss

Know all men by these presents, that We William H Walter and A D. Estes are held and firmly bound unto James Vaughan assignee of R Bennett Admr of Levi Bennett for the use of William Kirk, in the penal sum of Seventy one dollars and Seventy five Cents, lawful money of the United States, for the payment of which, well and truly to be made, We bind ourselves our heirs, & Administrators jointly, severally & firmly by these presents.

Witness our hands and Seals, this day of AD 1852

The Condition of the above obligation, is such, that Whereas, the said James Vaughan assignee of R Bennett, Admr of Levi Bennett, for the use of William Kirk, did on the 13th day of March AD 1852 before W Dodd, a Justice of the Peace for the County of Jefferson, recover a judgement against the above bounden William H Walter, for the sum of thirty one - 87, dollars from which Judgement, said William H Walter, has taken an Appeal, ~~from~~ to the Circuit Court of the County of Jefferson aforesaid and State of Illinois, — Now if the sd Wm H Walter shall prosecute his suit with Effect, and shall pay whatever Judgement, may be rendered by the Court upon dismissal or trial of said Appeal, then the above obligation, otherwise to remain in full force and Effect

W H. Walter (Seal)
A D, Estes (Seal)

Approved at my Office, this day of AD 1852

Appeal Bond

Filed March 31st
A.D. 1852
John Willard Clerk
By T. B. McLanahan

State of Illinois
Jefferson County } ss

The People of the State of Illinois, to the Sheriff of Jefferson County, Greeting.

We command you to summon,
William Kirk, if to be found in your County personally to be and appear, before the Circuit of said County, on the first day of the next thereof, to be commenced, and holden at the Court House in Mount Vernon on the second Monday of May next, to answer William H Walker, in an appeal, from the Judgment of William Dodds Esqr.
And hereof make due return to our said Court as the law directs

In testimony Whereof I John Welbanks have hereunto set my hand & ~~seal~~ affixed the official seal of said Court, at Office in Mount Vernon, the 31st day of March A.D. 1852

John Welbanks Clerk
By W. P. Warner D.C.

Vaughan for the use of

Cook

vs

William H. Walter

Summons

Executed by reading to William Cook

30th of April 1852

Serving	50
	60
12 miles	10
Returning	$1.20

John R. Satterfield

Sheff Jac Cos

May Term Jefferson Circuit Court 1832
Saturday 15th

James Vaughan, assignee &c
for the use of
William Kirk
vs
William H Walter

Appeal

It is ordered by the Court
that this cause stand continued until
the next term of this Court

[8842-4A]

James Vaughan assignee &c
for the use of William Kirk
vs
William H Walters

Be it remembered that on the trial of the above cause, the plaintiff gave in Evidence before the Court, the following described promissory Note, to wit "On or before the first day of November next, for goods got of the estate of Levi Bennett, and by my wife, over and above the specific property allowed her as his Widow. I promise to pay Reason Bennett, Administrator of the Estate of Levi Bennett deceased, Twenty two dollars & twenty five cents, with interest thereon from date

August 1st 1844 "

"William H Walters"

On the back of which is the following Endorsement (to wit) "I assign the within Note to James Vaughan for value received, this first day of November 1844

Reason his mark Bennett

And the plaintiff then rested his case, whereupon the Defendant then introduced Dowing Baugh a witness, who deposed that he was Probate Justice of the Peace of Jefferson County when said Note was given by the Deft — that the Deft & Reason Bennett the payee, came into the Probate Office, to make a settlement between Defendants wife (the widow of the intestate) and said Reason Bennett Administrator of the estate of Levi Bennett, and that upon such settlement, said deft's wife was found indebted, the amount of said Note — whereupon deft gave to Bennett said Note — that at that time the Estate of said deceased was supposed to be solvent, and that upon a final settlement thereof — there would be something coming to Deft's wife and it was agreed between Deft & R. Bennett that he (Bennett) would hold the Note until said settlement, and if there was

[3842-5]

any thing due Deft's wife, Bennett was to pay the amount with said Note, as far as it went — He believed that the Estate had never been settled, and supposed that it was solvent. It was his impression that said Reason Bennett, had some time after that left the Country, but did not know where he went —

James Walters, another witness introduced on ~~behalf~~ the part of the Defendant testified that he & Deft were in Company, with said Reason Bennett, ~~had some time after that left~~ on the Road, some time in the fall or Summer of the year that Polk was Elected President of the United States, think it was two or three weeks before the Election for President in this State; the weather Cold and the roads, muddy at the time — said Bennett & Deft at that time had some Conversation, about a Note, that Bennett should, have had on Deft — said Bennett, admitted that the Note was settled, and said he would hand it over to him the next time he saw him He did not describe, or identify ~~said~~ any particular Note — they merely spoke of a note, He dont know whether ~~the~~ it is the Note offered in Evidence or not. — Never had seen, this Note at the time ~~of the~~ Dont know of Reason Bennett, ever having had any other Note on Deft — That some time after this, Reason Bennett left the Country — But he cannot now Positively recollect how long this Conversation was before ~~before~~ he left the Country It is a long time since, and his recollection is very indistinct about it

George Reid, a witness then introduced on behalf of the Plaintiff, testified that after deft had been sued on the Note, he heard Deft say that he would have paid the Note before he was sued if Plff would have taken it in trade or part trade, for it was a Pity for Plff to loose it. But that he would not pay it now until it was made out of him by law, or unless it was made by law — And that he would give fifty dollars to any one who would tell him where

Reason Bennett was.

Defendant then offered to prove by a witness, that Vaughan, before he sold the said Note to Kirk, had recovered a Judgement on the same, before a Justice of the Peace; and after he had got the sd Judgement before the Justice ~~of the Peace~~, he sold the same to William Kirk, plaintiff as a bad & doubtful debt, and without any recourse back on him, and for less than the Note called for, on its face, which Evidence was objected to, by the Plaintiff, and the objection was sustained by the Court, and Defendant was not allowed to submit said testimony, to which Opinion & ruling of the Court the Deft by his Counsel excepted ~~at the~~ The Counsel for the Defendant stated to the Court, that his object in making said proof was to show, that said Vaughan when he bought the note, was privy to said Reason having ~~[illegible]~~ fraudulently sold it, when it belonged to the Estate of said Levi, And that there was something wrong, about the transaction on the part of said Vaughan — The above was all the Evidence, given on the trial of this cause — whereupon the Court rendered a Judgement for the Plff, for the amount of the Note & interest, Which is in the words & figures following (to wit)

James Vaughan for the use of
William Kirk
vs
William H Walters

Appeal

And now on this day comes the plaintiff herein by W. Baugh & R P Wingate his Attorneys — as also the Defendant by Richard L Nelson his Attorney, and issue being joined — the cause is submitted to the Court upon Evidence — The Court having heard & considered the Evidence, and being well advised in the Matter, Considers that Verdict and Judgement be for the Plaintiff, for the sum of $32.30 debt & interest and the Cost of this suit — Wherefore it

[pg 42-b]

It is considered and ordered by the Court that the said plaintiff recover of the said Defendant the sum of thirty two dollars and thirty cents, and the costs of this suit, that he have execution therefor &c. The Deft then by his Counsel, moved the Court for a New trial & in in arrest of Judgement but the Court having heard the arguments of Counsel upon said Motions and being well advised in the matter overruled said Motions – Therefore the Deft Excepts &c

The Defendant then by Nelson his Counsel, moved the Court for a New trial & in arrest of Judgement which Motions were overruled, to the overruling of said Motions & to the rendering of the Judgement by the Court the Defendant Excepted, and prays that this his bill of Exceptions may be signed, sealed & made a part of the record which is done.

Saml S Marshall
Circuit Judge

Filed March 23 1832
John Williams Clerk
By W Williams D.C.

State of Illinois }
County of Jefferson } ss

I John Wilbanks Clerk of the Circuit Court in and for the County and State aforesaid, do hereby certify, that the foregoing record is a true and perfect copy of the record now on file in this office, and of the proceedings had in the cause, wherein James Vaughan assignee &c. for the use William Kirk is plaintiff and William H Walter is defendant

In testimony whereof, I John Wilbanks Clerk of the Court aforesaid, do set my hand & affix the seal of said Court, at Office in Mount Vernon this 9th day of Nov. A.D. 1852

John Wilbanks Clerk
By G. P. Flanner D.C.

[8940-2]

Fees $2.75

Harper

William H. Watter

v.

William Kirk, et al

Filed the 12th day of November A.D. 1832

F. D. Preston
Clk

Fee unpaid

8842

Prestidee

1832

Dr dei

Bond Issued Nov 9th 1832